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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 181

HENRY J. THOMAS, JAMES FARMER, JOHN LEE COPELAND, ERNEST PATTON, JR., GRADY H. DONALD, PETER ACKERBERG, JAMES LUTHER BEVEL, PAULINE EDYTHE KNIGHT, CHARLES DAVID MYERS, CAROLYN YVONNE REED, JOSEPH JOHN McDONALD, RAYMOND RANDOLPH, JR., ALEXANDER ANDERSON, LESTER G. McKINNIE, WILLIAM E. HARBOUR, ZEV AELONY, MARVIN ALLEN DAVIDOV, CLAIRE O'CONNOR, DAVID KERR MORTON, KATHERINE A. PLEUNE, ROBERT FILNER, ELIZABETH S. ADLER, SANDRA NIXON, TERRY SUSAN PERLMAN, EDWARD J. BROMBERG, LESTRA ALENE PETERSON, THOMAS VAN HOLAND, JOAN FRANCES PLEUNE and GRANT HARLAN MUSE, JR.,

Petitioners,

—v.—

STATE OF MISSISSIPPI.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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In the

Supreme Court of the United States

October Term, 1963

No. 181

Henry J. Thomas, James Farmer, John Lee Copeland, Ernest Patton, Jr., Grady H. Donald, Peter Ackerberg, James Luther Bevel, Pauline Edythe Knight, Charles David Myers, Carolyn Yvonne Reed, Joseph John McDonald, Raymond Randolph, Jr., Alexander Anderson, Lester G. McKinnie, William E. Harbour, Zev Aelony, Marvin Allen Davidov, Claire O'Connor, David Kerr Morton, Katherine A. Pleune, Robert Filner, Elizabeth S. Adler, Sandra Nixon, Terry Susan Perlman, Edward J. Bromberg, Lestra Alene Peterson, Thomas Van Roland, Joan Frances Pleune and Grant Harlan Muse, Jr.,

Petitioners,

—v.—

State of Mississippi,

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Respondent's Incorrect Statement of Facts

The respondent, in its response to the petition for writ of certiorari, claimed that the petitioners had made several misstatements of fact in the petition. Petitioners will re-

spond to each of the major errors alleged by the respondent.

(1) Respondent states that the petitioners failed to inform this court that all convictions were had in jury trials (p. 2, end of ¶1—respondent's brief). Petitioners in the last paragraph of their petition on page 27 informed the court that all petitioners were found guilty in jury trials.

(2) Respondent states that witness Shoemaker did not make the statements ascribed to him in the petition at page 13 cited from pages 541, 544, 545, and 546 of the Thomas record. Respondent states that the witness, Captain J. L. Ray, was testifying at these pages (Respondent's brief, p. 3). Respondent evidently used the incorrect pagination which occurs at the top of the page in the record, which pages were the numbering of only the transcript of testimony. The statements petitioners ascribed to witness Shoemaker do occur at pages 541-546 if the correct pagination which appears at the bottom of the page in the record is consulted.

(3) Respondent claims that the statement that Captain of Police Ray had "numerous" officers and a patrol wagon for the purpose of arresting and carrying petitioners to jail was not in any of the thirty transcripts of trial and existed "only in the minds of petitioners' brief writers". (Respondent's brief, p. 2).

The first arrest occurred on May 24, 1961 and included petitioners Anderson and Bevel at 2:00 p.m. and petitioners Thomas, Farmer, Copeland, Patton, Donald, and Eckerberg at 4:45 p.m. The Thomas record covering 5 other petitioners discloses that Captain J. L. Ray had conferences with other public and city officials in contemplation of the arrival of the freedom riders (R. Thomas, 601). Two days prior to the arrival of any of the freedom riders, Captain

Ray had made plans as to where to place his men upon their arrival in the travel facilities (R. Thomas, 562). The total police force for the City of Jackson, Mississippi including plainclothesmen was approximately 200 to 230 (R. Thomas, 551). The captain's best estimate as to the total number of policemen used on May 24, 1961 to handle the coming of petitioners was approximately 75 men, with 6 officers inside the terminal and 7 officers immediately outside the terminal (R. Anderson, 224). On subsequent occasions other than that concerning the 7 petitioners accompanying Thomas and Anderson, the following numbers of police were deployed at the travel facilities where the arrests occurred:

Place	*Date*	*Officers*	*Citation*
Trailways Continental Bus Station	May 28, 1961	12 to 15	(R. Knight 16)[1]
	June 2, 1961	16	(R. Reed 17)
	June 7, 1961	16	(R. Randolph 17)
Greyhound Bus Terminal	May 28, 1961	"a detail of men"	(R. McKinnie 15)
	June 11, 1961	10 or 11	(R. Aelony 18)[2]
	June 16, 1961	6	(R. Adler 22)
Illinois Central Train Station	May 30, 1961	12	(R. Nixon 14)
	June 9, 1961	12	(R. Bromberg 20)
	June 20, 1961	10 to 12	(R. Muse 23)[3]

[1] The citation of the record from petitioner Knight covers petitioner Myer with whom he was arrested.

[2] Petitioners Davidov, O'Connor and Morton were arrested with petitioner Aelony.

[3] Petitioners Peterson, Van Roland and Pleune were arrested with petitioner Muse.

The arresting officer testified this was an "unusual" number of police to deploy at the terminals (R. Knight 16; Reed 17-18).

In response to a question as to whether there was a paddy wagon waiting near the station before the arrival of petitioner Thomas and his companions, Capt. Ray answered "yes" (R. Thomas 625-626). The wagon held approximately 15 to 16 persons (R. Thomas 626). Witness Shoemaker said he saw the paddy wagon present at the bus terminal prior to the arrival of each of the two groups of freedom riders on May 24, 1961 (R. Thomas 545).

In most instances the arresting officers testified they had "advance notice" that the petitioners were coming to "cause trouble" or "create an incident" (R. Thomas, 573-574; Bevel, 18; Knight, 16-17; Reed, 17-18; Randolph, 17; McKinnie, 16; Aelony, 17; Adler, 17; Perlman, 15-16; Nixon, 15; Bromberg, 15-16; Muse, 21-23). In each instance only the petitioners were arrested by officers who thought they were the cause of the trouble by their mere presence (R. Thomas, 624; Bevel, 28; Knight, 24, 25; Reed, 27-29; Randolph, 19; McKinnie, 22-23; Davidov, 30-31; Filner, 19; Nixon, 18; Perlman, 23; Bromberg, 22-23; Muse, 50-51). The record thus clearly defines the situation as petitioners stated: Captain Ray had determined in advance that the petitioners were the parties who would have to be arrested and he had additional police and equipment to do so.

Argument

Respondent's argument as to the legality of petitioners' convictions is based mainly on an attempt to distinguish *Edwards* v. *South Carolina*, 372 U. S. 229 and to rely on *Feiner* v. *New York*, 340 U. S. 315.

The facts surrounding petitioners' arrest more closely parallel those in *Taylor* v. *Louisiana*, 370 U. S. 154, *Henry* v *Rock Hill*, —— U. S. ——, 12 L. Ed. 2d 79 and *Edwards* v. *South Carolina supra*. Petitioners were peacefully exercising a clear right to use interstate travel facilities on a racially desegregated basis. There is a long line of authority for the proposition that if petitioners engaged in a constitutionally protected protest against racial discrimination, they cannot be punished criminally because other persons threaten them with violence. *Cooper* v. *Aaron*, 358 U. S. 1; *Buchanan* v. *Warley*, 245 U. S. 60; *Terminiello* v. *Chicago*, 337 U. S. 1. Were this not so, no person, Negro or white, opposed to racial segregation could risk speaking his views in a state such as Mississippi which has a long history of implacable, violent and widespread opposition to racial equality.

Feiner v. *New York supra* does not present the same factual circumstances as the instant cases. The nature of defendant Feiner's speech was entirely different from petitioners', as Feiner urged his listeners to arm themselves and engage in violence. *Feiner* v. *New York supra* at p. 317. Further, the court in *Feiner* found that:

> "There was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions" at p. 319.

The records here are replete with evidence that the multiple arrests of petitioners, each day they appeared over

a two-month period, were a systematic design to enforce racial segregation. Here, there was no single arrest by two police officers sent to cover an emergency circumstance they had no foreknowledge of, as in *Feiner,* but rather a planning by police officers in advance to arrest all petitioners on some pre-supposition that they were coming to "cause trouble", which in fact meant they were coming to breach segregation customs. The official resistance of the State of Mississippi to racial desegregation is a well-known fact, and state officials, including the police, are required by statute to use their office to thwart racial desegregation. Miss. Code Section 4063.3.

Respondent's position may be summarized as (a) misplaced reliance on *Feiner* v. *New York, supra* (b) claiming errors in petitioners' statement of the facts which were not errors but represent only respondent's reference to inapposite pagination; and (c) an incomplete reading of petitioners' brief.

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

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